

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Federal-State Joint Board on)
Universal Service)
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CC Docket No. 96-45

To: The Commission

COMMENTS OF THE NEW YORK CITY BOARD OF EDUCATION

The New York City Board of Education requests the consideration of the following comments regarding the Commission's April 30, 2001 Further Notice of Proposed Rulemaking (Notice) on:

- (1) a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections the previous year; and
- (2) a proposed modification to the rule to provide additional time for recipients to implement contracts or agreements with service providers for non-recurring services (FCC 01-143).

SUMMARY

The New York City Board of Education (NYCBOE)— which provides free primary and secondary education to approximately 1.1 million students and operates more than 1,574 facilities—has strong reservations with certain aspects of the proposed rule change regarding funding priority for internal connections in Year Four, as presented in the Notice. However, we support the recommended modification of the implementation schedule for non-recurring services also included in the proposed Rule. Following is a summary of our comments.

- (1) The current funding priority rules for allocating available E-Rate funds to applicants in the 90 percent discount level on a pro rata basis by discount band should continue and not be modified.
- (2) Awarding funding priority to requests for internal connections made by schools and libraries that did not receive funding commitments during the previous year in order of discount level would have the unintended effect of disqualifying high poverty school districts like New York City from receiving internal connections funding in Year 4.

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- (3) New York City supports the modification to extend the deadline for Year 3 non-recurring services to September 30, 2001, as well as to institutionalize the three-month extension permanently for such services to September 30 following the close of the funding year.

A. Funding Priority for Internal Connections

Under the proposed rule, the FCC seeks comments on two options for distribution of support for internal connections. Following are our comments on these alternatives.

Option #1 — The FCC proposes “...to maintain the Commission’s rules as currently written, which direct that the remaining funds be prorated by discount band”.

NYCBOE Recommendation

The current funding priority rules for allocating available E-Rate funds to applicants on a pro rata basis by discount band should continue and not be modified.

In recognition of the fact that there is insufficient funding to grant all Year 4 internal connection requests within the highest discount band, priority should continue to be given to the highest poverty schools. Where there is insufficient funding to fully support requests in a discount band, the remaining funds should be distributed on a pro rata basis over the single discount band.

Rationale

Pro rata distribution of funds is an established process in the E-rate program and its possible use was considered during our planning process. Changing this mechanism after months of planning and the submission of our application will only undermine the stability the program has achieved.

While reduced funding creates implementation challenges to a school district, there are mechanisms in place to overcome any potential obstacles. Applicants can strategically use their pro rated funding awards by modifying their original work plan in both the numbers of schools and in the scope of work to be completed in those buildings. These changes enable applicants to use their reduced allocation to provide some level of service to some number of schools. In light of reduced funding awards, we would expect that the Schools and Libraries Division (SLD), under existing rules, would minimize any restrictions on making changes to work plans.

Option #2 — The FCC proposes “...to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.”

NYCBOE Recommendation

We are concerned with the interpretation and implementation of this modification and therefore oppose alternate year funding for internal connections. While the intent of this option is to provide opportunity for schools that did not receive funding in Year 3 of the program, it may have the unintended effect of preventing any New York City public school from receiving internal connections funding in Year 4. This would include a denial of funds to approximately 426 of the highest poverty schools in New York City that received only minimal internal connection work in Year 1 of the program.

Rationale

The SLD established the discount band concept to provide some flexibility for large school districts to substitute similarly eligible schools during the work period. In the case of New York City, our application for funding defines a scope of work for a subset of our eligible schools in each of the discount bands. The complexity and size of our application makes it difficult to determine schools actually receiving internal connections during the year. The Administrator would have to examine vendor invoices and match it with our district work plan to identify which schools would be disqualified for Year 4 funding. A retroactive enactment of the proposed rule for Year Four, as suggested by the notice would be unfair to applicants and institute a burdensome process for schools and libraries as well as SLD program administrators.

In addition, we are concerned that by classifying “recurring maintenance” within the internal connection category, many of our schools would be ineligible to receive funding for internal connections in Year 4. Maintenance of equipment is an expense item that is included under the internal connections category, and would be viewed as equivalent to cabling or equipment installations under the proposed Rule. Since New York City took the responsible position of contracting for maintenance of existing telecommunications equipment, all of our schools will be considered to have received internal connections for the current year. The proposed modification would encourage schools and libraries to consider dropping maintenance in alternate years to position themselves for alternate year eligibility. We view the maintenance of our investment as integral to extending the longevity of our telecommunications equipment. It seems unreasonable to deny a school funding because it has a maintenance contract and doing so would be inconsistent with the FCC’s motive for modifying the distribution-funding rule.

To illustrate, consider that New York City has more than 726 public schools that qualify for the 90% discount. Of those, more than half had only a minimal amount of internal connection work (such as wiring less than 10% of a school’s classrooms) completed in

Year 1. Funding for additional installations was approved for these schools in either Year 2 or 3. However, to protect the reliability of the investment made in those schools, we contracted for maintenance services for their telecommunications equipment. In fact, the maintenance costs for many of those schools in the 90% discount band were approved for discounting in Year 3. We are strongly concerned that by equating maintenance with internal connections, these maintenance approvals for Year 3 will disqualify ALL of our most disadvantaged schools for Year 4 funding. This would include schools with a very small percentage of their classrooms wired for the Internet during Year 1 of the Universal Service Program.

If this proposed modification to the existing rules is enacted, none of New York City's 1,200 schools will qualify for internal connection discounts, including the 426 disadvantaged schools in the 90% discount band that had only minimal internal connection work funded in Year 1. This cannot be the outcome sought by the FCC in proposing changes to existing distribution rules.

B. Modification of Implementation Schedule for Non-recurring Services

Under the proposed rule, the FCC proposes "...a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year."

NYCBOE Recommendation

We support the modification to institutionalize the three-month extension to the E-rate year. Because of long delays in the application approval process, these additional 90 days are usually needed to simply provide schools and libraries a 12-month period to complete their work.

Rationale

Waiting for an annual FCC decision on extending the E-rate year complicates our ability to effectively deploy vendor resources. While this modification to the rules will be helpful to all schools and libraries, we bring attention to the built-in bias against large school districts like New York in regards to the length of the funding year and the time to complete approved telecommunications work.

The size and complexity of wiring 50,000 classrooms in 1,200 schools in New York City requires considerable resources, coordination and time. Each year, our E-rate application is one of the last applications to be approved. In many instances there are districts that receive approval more than 5 months before New York City. This, in effect, grants much smaller districts and individual schools extra months, including an extra summer, to complete much smaller projects. The SLD appears to focus each year on processing and approving smaller applications first. This allows them to claim a greater percentage of applications processed closer to the start of a new funding year. We have presented this

concern to the SLD each year and suggested that they focus on percentage of funding approved rather than applications processed. We see no evidence that this situation is being addressed.

The New York City public school system is appreciative of the universal service E-rate program. Without this resource we would not be able to claim that more than 23,000 of our 50,000 classrooms now offer Internet access for students and teachers. We want the program to remain strong and focused. We ask that you give serious consideration to our comments and recommendations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Kristor W. Cowan', written in a cursive style.

Kristor W. Cowan
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